

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

ALBERT D. SEENO, et al.,

Plaintiffs,

v.

DISCOVERY BUILDERS, INC., et al.,

Defendants.

Case No. [5:23-cv-04072-EJD](#)

**ORDER GRANTING MOTION TO  
DISMISS**

Re: Dkt. No. 21

Plaintiffs Albert D. Seeno, Jr. (“Seeno”) and Albert D. Seeno Construction Co. (“Seeno Construction”) (collectively, “Plaintiffs”) bring claims for trademark infringement and false designation of origin under the Lanham Act, 15 U.S.C. §§ 1051, *et seq.*, against Defendants Discovery Builders, Inc., (“Discovery Builders”), Discovery Realty, Inc. (“Discovery Realty”), and Seeno Homes, Inc. (“Seeno Homes”) (collectively, “Defendants”). Compl., ECF No. 1.

Before the Court is Defendants’ motion to dismiss. Mot. to Dismiss (“Mot.”), ECF No. 21. Plaintiffs filed an opposition, and Defendants filed a reply. Pls.’ Opp’n to Mot. (“Opp’n”), ECF No. 28; Defs.’ Reply in Supp. of Mot. (“Reply”), ECF No. 30. The Court heard oral arguments from the Parties on February 6, 2024, and took the matter under submission. ECF No. 40. For the following reasons, the Court **GRANTS** Defendants’ motion to dismiss with leave to amend.

**I. BACKGROUND**

This case arises from a dispute between competing family businesses in the construction and real estate industries regarding the use of three trademarks (collectively, the “Marks”).

**A. Parties**

Seeno is an individual residing in Contra Costa County, California. *Id.* ¶ 1. He is a

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1 shareholder and Managing General Partner of Seeno Construction, a California limited partnership  
2 formed in 1960, which was passed down to Seeno from his father. *Id.* ¶¶ 1–2.

3 Seeno is the father of Albert D. Seeno, III (“Seeno III”). Seeno III is the owner of  
4 Defendant companies Discovery Builders, Discovery Realty, and Seeno Homes, all of which are  
5 California corporations with their principal places of business in Contra Costa County. *Id.* ¶¶ 3–5,  
6 16. Discovery Builders is a construction management company formed in 1998. *Id.* ¶ 16.  
7 Discovery Realty is a real estate brokerage company formed in 2005. *Id.* ¶ 17. Plaintiffs allege no  
8 facts describing Seeno Homes other than that it was formed in 2019. *Id.* ¶ 18.

### 9 **B. Factual Background**

10 Plaintiffs allege that they are the owners of three trademarks (collectively, the “Marks”),  
11 one of which is registered and two of which are unregistered. *Id.* ¶ 12.

12 Plaintiffs allege that Seeno Construction is the owner of one registered service mark,  
13 “Seeno Homes” (“Seeno Homes Mark”), which was registered with the United States Patent and  
14 Trademark Office (“USPTO”) in 1997 and with the California Secretary of State in 2003. *Id.* ¶ 14.  
15 Prior to its registration, Plaintiffs allege that the Seeno Homes Mark had been in use by Seeno  
16 Construction since at least 1993. *Id.* Seeno Construction has also allegedly used the Seeno Homes  
17 Mark as its registered fictitious business name. *Id.*

18 Plaintiffs also allege to own two additional unregistered Marks, both of which Seeno filed  
19 an application to register with the USPTO on April 1, 2022:

- 20 (1) a service mark and associated logo, “Seenohomes Building since 1938” (“1938 Mark”),  
21 which has been used by Seeno Construction since at least 2008; and
- 22 (2) a service mark, “Albert D. Seeno Construction Co.” (“ADSCC Mark”), which has been  
23 used by both Seeno Construction and Seeno in an individual capacity since at least  
24 1960. *Id.* ¶ 13.

25 It appears that Plaintiffs and Defendants at one point had a positive working relationship.  
26 *See id.* ¶ 20. Since approximately 2004, Discovery Builders provided construction management  
27 services to some of Plaintiffs’ projects, as well as developing and constructing its own independent

1 real estate projects. *Id.* ¶ 16. Discovery Builders also managed Plaintiffs’ website,  
 2 seenohomes.com, as well as maintaining its own separate website, discoveryhomes.com. *Id.* ¶ 20.  
 3 Both websites had links to the other’s website. *Id.* This relationship seems to have broken down  
 4 about four years ago. *Id.* ¶ 21.

5 Plaintiffs allege that approximately four years ago, and presently, Discovery Builders used its  
 6 control over the seenohomes.com website to automatically re-direct users to discoveryhomes.com.  
 7 *Id.* Also beginning approximately four years ago, and presently, Plaintiffs allege that the  
 8 discoveryhomes.com website maintains the 1938 Mark on its home page, as well as lists the Seeno  
 9 Homes Mark and ADSCC Mark on its About page and Terms and Conditions page. *Id.* ¶ 23.

10 Plaintiffs also allege that the 1938 Mark and Seeno Homes Mark were impermissibly used  
 11 on various social media accounts, although Plaintiffs do not allege when this unauthorized use  
 12 began. For example, the 1938 Mark and Seeno Homes Mark has appeared on a YouTube channel  
 13 with the username “@DiscoverySeeno,” which Plaintiffs believe to be owned by Defendants. *Id.* ¶  
 14 28. The 1938 Mark and Seeno Homes Mark has also appeared on an Instagram feed with the  
 15 username “discoveryseenohomes,” which Plaintiffs believe to be owned by Defendants. *Id.* ¶¶ 31,  
 16 32. Finally, the 1938 Mark has appeared on a Facebook page with the username “Discovery and  
 17 Seeno Homes,” which Plaintiffs believe to be owned by Defendants. *Id.* ¶ 36.

18 Plaintiffs also allege that, at times, content on discoveryhomes.com, the YouTube channel,  
 19 the Instagram, and the Facebook page would blur the lines of the Seeno Construction<sup>1</sup> and all three  
 20 Defendant companies, by referring to them collectively and using the phrases “we,” “us,” “our,”  
 21 etc. *Id.* ¶¶ 23–26. Plaintiffs allege that this conduct confuses the public and abuses Plaintiffs’ good  
 22 business reputation. *Id.*

23 Plaintiffs allege that the conduct described above gives rise to three causes of action: (1)  
 24 trademark infringement under the Lanham Act by Plaintiffs against all Defendants; (2) false  
 25

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26 <sup>1</sup> Notably, Plaintiff Seeno Construction is not named on these social media accounts. Instead,  
 27 Plaintiffs appear to allege that referring to Defendant Seeno Homes’s corporate name in the social  
 28 media account creates confusion because the Seeno Homes Mark has been used by Plaintiffs on  
 their website and as their fictitious business name.

1 designation of origin under the Lanham Act by Plaintiffs against all Defendants; and (3) false  
2 designation of origin under the Lanham Act by Seeno Construction against Seeno Homes. *Id.* ¶¶  
3 40–62.

## 4 **II. LEGAL STANDARD**

5 A complaint must contain “a short and plain statement of the claim showing that the pleader  
6 is entitled to relief.” Fed. Rule Civ. Pro. 8(a)(2). A defendant may move to dismiss a complaint  
7 for failing to state a claim upon which relief can be granted under Rule 12(b)(6). When deciding  
8 whether to grant a motion to dismiss under Rule 12(b)(6), the court must generally accept as true  
9 all “well-pleaded factual allegations.” *Ashcroft v. Iqbal*, 556 U.S. 662, 664 (2009). While a  
10 plaintiff need not offer detailed factual allegations to meet this standard, she is required to offer  
11 “sufficient factual matter . . . ‘to state a claim to relief that is plausible on its face.’” *Id.* at 678  
12 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The court must construe the  
13 alleged facts in the light most favorable to the plaintiff. *See Retail Prop. Trust v. United Bd. of*  
14 *Carpenters & Joiners of Am.*, 768 F.3d 938, 945 (9th Cir. 2014) (“[The court] must accept as true  
15 all factual allegations in the complaint and draw all reasonable inferences in favor of the  
16 nonmoving party.”). However, “courts are not bound to accept as true a legal conclusion couched  
17 as a factual allegation.” *Iqbal*, 556 U.S. at 678.

18 If the court concludes that a 12(b)(6) motion should be granted, the “court should grant  
19 leave to amend even if no request to amend the pleading was made, unless it determines that the  
20 pleading could not possibly be cured by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d  
21 1122, 1127 (9th Cir. 2000) (en banc) (quotation omitted).

## 22 **III. DISCUSSION**

23 Defendants move to dismiss Plaintiffs’ complaint on three grounds: (1) Plaintiffs failed to  
24 plead statutory standing; (2) Plaintiffs impermissibly lumped together all Defendants; and (3)  
25 Plaintiffs failed to plead facts sufficient to state their claims. The Court will address each in turn.

### 26 **A. Standing**

27 First, Defendants argue that Plaintiffs failed to plead statutory standing under the Lanham

Act for both the unregistered and registered trademarks. *See* Mot. 5–10.

“To establish standing to sue for trademark infringement under the Lanham Act, a plaintiff must show that he or she is either (1) the owner of a federal mark registration, (2) the owner of an unregistered mark, or (3) a nonowner with a cognizable interest in the allegedly infringed trademark.” *Halicki Films, LLC v. Sanderson Sales & Mktg.*, 547 F.3d 1213, 1225 (9th Cir. 2008).

### 1. Registered Mark: Seeno Homes

The registration of a mark is “prima facie evidence . . . of the registrant's ownership of the mark.” 15 U.S.C. § 1115(a); *see also Sebastian Brown Prods., LLC v. Muzooka, Inc.*, 143 F. Supp. 3d 1026, 1039–40 (N.D. Cal. 2015).

Here, Plaintiffs allege that Seeno Construction is the owner of the Seeno Homes Mark, which was registered with the USPTO in 1997 and with the California Secretary of State in 2003. Compl. ¶ 14. The Court finds that this is sufficient to plead statutory standing at this stage.

The Court finds Defendants’ arguments to the contrary unpersuasive. Defendants argue that Plaintiffs have failed to plead ownership of the Seeno Homes Mark because the Seeno Homes Mark lacks inherent distinctiveness and there are no allegations of the services associated with the mark. *Id.* at 8–10. However, Defendants have failed to provide the Court with any authority to support their argument that pleading inherent distinctiveness or associated services are required to plead ownership for purposes of statutory standing. *See id.* On the contrary, the cases Defendants cite do not discuss these elements in the context of standing whatsoever. *See, e.g., Jack Daniel's Properties, Inc. v. VIP Prod. LLC*, 599 U.S. 140 (2023) (no discussion of standing); *Comedy III Prods., Inc. v. New Line Cinema*, 200 F.3d 593, 594 (9th Cir. 2000), *as amended on denial of reh'g and reh'g en banc* (Feb. 4, 2000) (same); *E. & J. Gallo Winery v. Gallo Cattle Co.*, 967 F.2d 1280, 1293 (9th Cir. 1992) (same); *Paul Frank Indus., Inc. v. Sunich*, 502 F. Supp. 2d 1094, 1098 (C.D. Cal. 2007) (same); *Golden Eye Media USA, Inc. v. Trolley Bags UK Ltd.*, 525 F. Supp. 3d 1145, 1221 (S.D. Cal. 2021), *aff'd sub nom. Golden Eye Media USA, Inc. v. Evo Lifestyle Prod. Ltd.*, No. 2021-2096, 2022 WL 2232517 (Fed. Cir. June 22, 2022) (no discussion of standing specifically regarding trademark infringement claim). Thus, in the absence of authority to suggest otherwise,

the Court declines Defendants’ invitation to read inherent distinctiveness and associated services into the requirement to plead ownership for the purposes of statutory standing.

## 2. Unregistered Marks: 1938 Mark and ADSCC Mark

It is not necessary that a trademark be registered to qualify for protection under the Lanham Act; however, without registration, a mark does not receive the prima facie presumption of validity from which registered marks benefit. *EVO Brands, LLC v. Al Khalifa Grp. LLC*, 657 F. Supp. 3d 1312, 1325 (C.D. Cal. 2023) (citing *New W. Corp. v. NYM Co. of California*, 595 F.2d 1194, 1198 (9th Cir. 1979) and *Brookfield Commc’ns, Inc. v. W. Coast Ent. Corp.*, 174 F.3d 1036, 1047 (9th Cir. 1999)). Instead, a party claiming an unregistered trademark must allege sufficient facts to support their assertion that it has a valid ownership interest in the mark. *Sebastian Brown Prods., LLC v. Muzooka, Inc.*, 143 F. Supp. 3d 1026, 1041 (N.D. Cal. 2015).

An ownership interest in unregistered trademarks is demonstrated through priority of use and continuous use. *Id.* at 1039 (citing *Sengoku Works Ltd. v. RMC Int’l, Ltd.*, 96 F.3d 1217, 1219 (9th Cir.1996) (“It is axiomatic in trademark law that the standard test of ownership is priority of use.”); *Airs Aromatics, LLC v. Hakim*, 556 F. App’x 622, 623 (9th Cir. 2014) (“To establish a protectable ownership interest in a common law trademark, the owner must ‘establish not only that he or she used the mark before the mark was registered, but also that such use has continued to the present.’”) (quoting *Watec Co., Ltd. v. Liu*, 403 F.3d 645, 654 (9th Cir. 2005)). In other words, a plaintiff must allege that they used the mark in commerce before the defendant and have continued use to this day. *See EVO Brands*, 657 F. Supp. 3d at 1325.

Here, Plaintiffs allege that the 1938 Mark has been used by Seeno Construction since at least 2008, and the ADSCC Mark has been used by both Plaintiffs since at least 1960. Compl. ¶ 13. Plaintiffs allege that approximately four years ago, Defendants began using the 1938 Mark and ADSCC Mark on the discoveryhomes.com website. *See id.* ¶¶ 22–23. The Court finds that this is sufficient to plead priority and continuous use at this stage. Plaintiffs’ complaint sufficiently alleges that they used the unregistered Marks prior to Defendants, and they continue to use the Marks to this day.

1 The Court finds Defendants' arguments to the contrary unpersuasive.

2 First, Defendants argue that, while Plaintiffs have pled the date of first use, they have not  
3 pled that this use was continuous. Mot. 7–8. While it is true that Plaintiffs do not specifically  
4 allege the words "continuous use," the Court will draw all reasonable inferences in the light most  
5 favor of Plaintiffs, as it must. *Retail Prop. Trust*, 768 F.3d at 945. As such, it can be reasonably  
6 inferred in the language "since at least" that Plaintiffs' use of the Marks continues to this day. *See*  
7 *Compl.* ¶ 13. At the very least, it can be reasonably inferred that ADSCC Mark is currently in use,  
8 as it is currently Plaintiff Seeno Construction's corporate name.

9 Second, Defendants argue that Plaintiffs have failed to plead distinctiveness or secondary  
10 meaning. However, as the Court discussed in the section prior, Defendants have failed to provide  
11 the Court any authority to support their argument that pleading inherent distinctiveness or services  
12 associated with the Mark are required to plead ownership for purposes of statutory standing. *See*  
13 *Mot.* 8–10 (citing *Jack Daniel's*, 599 U.S. 140 (no discussion of standing); *Comedy III*, 200 F.3d at  
14 594 (same); *Gallo Winery*, 967 F.2d at 1293 (same); *Paul Frank*, 502 F. Supp. 2d at 1098 (same);  
15 *Golden Eye Media*, 525 F. Supp. 3d at 1221 (no discussion of standing specifically regarding  
16 trademark infringement claim)).

17 Third, Defendants argue that Plaintiffs have failed to plead that the Marks were used in  
18 commerce in connection with any particular services. Mot. 6–7. However, again here, Defendants  
19 have failed to cite any authority to support their argument that alleging use in connection to a  
20 particular service is a required component of alleging ownership for statutory standing purposes.  
21 *See id.*

22 However inartful, the Court finds that Plaintiffs' pleadings include enough information  
23 whereby the Court can reasonably piece together facts to support statutory standing at this stage.

#### 24 **B. Impermissibly Lumping Together Defendants**

25 Next, Defendants argue that Plaintiffs have impermissibly lumped together all three  
26 Defendant companies throughout the complaint, failing to allege conduct attributable to any one  
27 Defendant specifically. Mot. 10–12.



1 In general, a complaint which “lump[s] together . . . multiple defendants in one broad  
2 allegation fails to satisfy [the] notice requirement of Rule 8(a)(2).” *Brown Prods., LLC v.*  
3 *Muzooka, Inc.*, 143 F. Supp. 3d 1026, 1037 (N.D. Cal. 2015) (quoting *Gen-Probe, Inc. v. Amoco*  
4 *Corp., Inc.*, 926 F. Supp. 948, 961 (S.D. Cal. 1996)). Rather, a plaintiff “must identify what action  
5 each Defendant took that caused Plaintiffs’ harm, without resort to generalized allegations against  
6 Defendants as a whole.” *Id.* (quoting *In re iPhone Application Litig.*, No. 11–MD–02250–LHK,  
7 2011 WL 4403963, at \*8 (N.D. Cal. Sept. 20, 2011)).

8 Here, Plaintiffs do undeniably lump together Defendants throughout the complaint,  
9 referring only to them all jointly as “Defendants.” Plaintiffs argue that, nevertheless, the complaint  
10 still meets Rule 8 because Plaintiffs allege that each of Defendant was the agent, employee, and/or  
11 alter-ego of each of the other remaining Defendants and, at all relevant times, acted within the  
12 course and scope of such agency and/or employment. Compl. ¶ 6. However, the facts Plaintiffs  
13 allege in support of this legal conclusion are thin:

14 To the extent Defendants argue that Plaintiffs’ allegation that each of  
15 Defendants was the “agent, employee, and/or alter ego of each of the  
16 other remaining Defendants” is insufficient, the argument is incorrect.  
17 As noted above, Plaintiffs adequately allege that Defendants  
committed trademark infringement and false designation of origin.  
Moreover, all Defendant entities are owned by ADS3, and Plaintiffs  
have alleged that all Defendants have made use of Plaintiffs’ Marks.

18 Opp’n 11.

19 The mere facts that all three independent companies are owned by the same person and are  
20 alleged to infringe on the Marks are insufficient to show that each employee operated as the agent,  
21 employee, and/or alter-ego of another. Similarly, Plaintiffs have failed to allege any facts to  
22 support their conclusion that Defendants’ conduct amounts to bad faith such that it would be  
23 inequitable for the corporate owner to hide behind the corporate form. *See* Opp’n 11–12.

24 Absent the agent, employee, alter-ego theory, it cannot be reasonably inferred from the facts  
25 which conduct is attributable to which Defendant. This is evident from the complaint’s allegations  
26 regarding the social media accounts. While Plaintiffs could be forgiven for not possessing the  
27 detailed account information within the exclusive control of Defendants, Plaintiffs must still



specify which Defendant they allege infringed on which Mark and how. For example, Discovery Realty and Discovery Builders do not appear in any of the social media accounts or their posts. *See id.* ¶¶ 28–39. The only companies listed in the accounts and their posts are Seeno Homes and another company called “Discovery Homes,” which is not a defendant in this matter. *Id.* The ADSCC Mark also does not appear in any of the social media accounts. *Id.* Yet, Plaintiffs broadly allege that all Defendants collectively infringed on all three of the Marks on all the social media accounts. *Id.* These general allegations are insufficient to satisfy the pleading requirements imposed by *Iqbal* and *Twombly*.

Therefore, because the complaint is devoid of facts indicating which Defendant infringed on which Mark and how, the Court **GRANTS** the motion to dismiss with leave to amend. *See Lopez*, 203 F.3d at 1127 (finding that the “court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts”) (quotations omitted).

#### C. Failure to State a Claim and Acquiescence

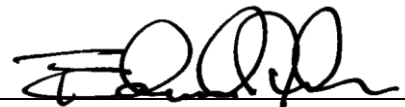
Because the Court grants Defendants’ motion to dismiss on the ground that Plaintiffs impermissibly lumped together all three Defendants throughout the complaint, the Court finds it unnecessary to address Defendants’ remaining arguments regarding failure to state a claim and acquiescence at this time.

#### IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Defendants’ motion to dismiss with leave to amend. Plaintiffs may file an amended complaint by March 12, 2024.

**IT IS SO ORDERED.**

Dated: February 20, 2024



EDWARD J. DAVILA  
United States District Judge